

REMARKS – General

Examiner Interview:

Applicant kindly thanks the Examiner for his time during another interview held March 4, 2010. During the interview, Applicant and Examiner discussed Applicant's amendment set forth herein. Applicant argued that the amendment overcomes the rejection under 35 USC §112 set forth in the Office Action of February 5, 2010. Applicant further argued that Applicant's independent claims 1 and 25 remain distinct from the combination of Plotnick and Swix in light of the amendment. The Examiner generally agreed, noting that an additional prior art search may need to be conducted.

Claim Rejections under 35 USC §112:

The most recent Office Action rejects claims 1 and 25, as well as claims depending therefrom, under 35 USC §112. Specifically, the Office Action submits that claims 1 and 25 recite subject matter not contained in the original specification, in that each claim recites removing "unviewed" barker advertisements from a queue.

While Applicant respectfully disagrees, to advance prosecution in this case, Applicant has amended claims 1 and 25 to remove the word "unviewed." Applicant respectfully notes that removing barker advertisements from a queue is clearly supported by Applicant's specification as originally filed at page 11, lines 24-27, or in paragraphs [0048]-[0049] of the specification as published.

Applicant respectfully submits that the rejection under 35 USC §112, while traversed, is overcome by way of the amendment.

Additional Comments:

Applicant notes that no rejections in view of prior art are set forth in the Office Action of February 5, 2010. However, in light of the fact that Applicant has amended the independent claims, Applicant wishes to note that despite the removal of the word "unviewed" from claims 1 and 25, these claims are still distinct from most recently cited prior art of record, which is the combination of Plotnick et al., US Published Patent

Application No. 2002/0184047, hereinafter “Plotnick,” combined with Swix et al., US Published Patent Application No. 2004/0163101, hereinafter “Swix.”

Applicant’s independent claims, in relevant part, recite a determination of previously ordered or viewed content. Upon this determination, Applicant’s independent claims recite the removal of barker advertisements from a queue where those advertisements correspond to content that has been previously ordered or viewed by a user.

Applicant respectfully submits that neither Plotnick nor Swix, alone or in combination, teaches such a removal of barker advertisements from a queue.

As noted by the Examiner in the Office Action of February 20, 2009, Plotnick teaches removal of advertisements from a queue. However, none of the reasons for removal set forth in Plotnick has anything to do with whether those ads correspond to previously ordered or viewed content.

As set forth in the Plotnick at paragraphs [0061] and [0081], Plotnick teaches removing items based upon a predetermined number of times that they have been viewed by a user. Plotnick states, “Once the ads have been played from the top of the queue they may be added back to the queue, either at the bottom or some other location depending on the algorithm associated with the ad and the ad queue. The ad queue may also have limitations on the *duration of time the ad is in the queue*, *the number of times the ad is played within a specific time* (or other factor), *the time frame between displaying the ads*, or some other criteria now known or later discovered that would be obvious to one of ordinary skill in the art.” *Id.* Note that none of these reasons is, as is claimed by Applicant, because the ad corresponds to previously viewed content.

Similarly, at paragraph [0081], Plotnick gives other reasons ads can be removed. Plotnick states, “...UAQ is updated each time an individual ad queue needs to be updated because it is out of ads (i.e., *played maximum number of times*, *ad campaign over*, *new advertisers have purchased avails*, *existing advertisers have opted out of their avails*, or any other number of reasons that would be obvious).” *Id.* Again, none of these reasons is that the ad is related to previously viewed content.

At paragraph [0151], other reasons are given. “Examples of ads that may be removed or added include, but are not limited to *specific ads* (i.e., Brittany Spears

Pepsi.RTM. ad), specific company ads (i.e., Pepsi.RTM.), ads for a particular product type (i.e., beer), specific type of ads (i.e., EPG), or specific genre of ad (i.e., funny ads).” *Id.* None of these reasons is that the ad is related to previously viewed content.

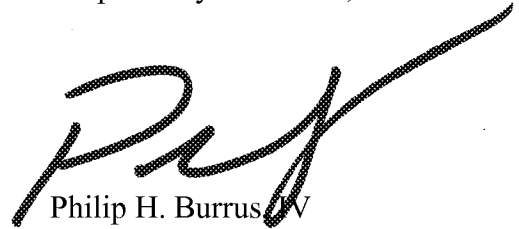
The addition of Swix to Plotnick does nothing to correct this deficiency. Swix merely teaches removing advertisements from a locally stored cache when they are unappealing to a viewer. Paragraph [0066] of Swix states, in relevant part, “Also, to save cache capacity, preferably, head end 110 initially screens the advertisements that are to be loaded ahead of time on the set-top box and removes the advertisements that would not appeal to that specific subscriber whatsoever. For example, advertisements for women’s wear would be removed from delivery to a male-only household.” *Id.* The advertisements of Swix “that would not appeal to [a] specific subscriber whatsoever,” when combined with Plotnick, teaches away from “previously ordered or viewed content” because people do not order or view content “that would not appeal” to them “whatsoever.”

As discussed in the interview, the combination of Plotnick and Swix both fails to teach and teaches away from Applicant’s invention. Applicant therefore respectfully submits that the amended claims set forth herein are patentably distinct from the combination of Plotnick and Swix. Accordingly, Applicant respectfully submits that as no other rejections over prior art have been made, this application is in condition for allowance.

CONCLUSION

For the above reasons, Applicants believe the specification and claims are now in proper form, and that the claims all define patentably over the prior art. Applicants believe this application is now in condition for allowance, for which they respectfully submit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "PB" followed by a stylized flourish.

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